

**Review of Liz Campbell, Shane Kilcommins, and Catherine O’Sullivan,
Criminal Law in Ireland: Cases and Commentary
(Dublin: Clarus Press, 2010)**

Dr. Gerard Coffey*

Irish criminal law has undergone substantial reform based on a policy of modernisation since the early 1990s. However, this reform has taken place in a piecemeal fashion and has progressed very slowly. Speaking in 1988 the former Director of Public Prosecutions stated:

... the criminal law is in urgent need both of modernisation and of codification The law, especially the criminal law, should be clear and accessible to all if all are liable for breaches of it. The scourge of legislative amendments, of amendments of amendments, of substitutions, insertions and deletions and of cross-reference definitions has made the task of ascertaining the current status of some offence and penalty sections a nightmare.¹

To this may be added the observations by Charleton (*et al.*) on the absence of a codified system of criminal law in this jurisdiction:

Ireland ... is left floundering among a mass of statutes and decisions when criminal law and evidence should be clear and readily accessible in a single document This jurisdiction has left undefined the most fundamental concepts of criminal liability. Nowhere is there to be found a statement by the Oireachtas on the foundations of criminal liability and the various mental elements of crime. Even proscribed conduct is often described in imprecise language.²

The current status of Irish criminal law is best described as an amalgam of ‘mini-codes’ complemented by the common law principles of criminal liability. In 2002, an Expert Group on the Codification of the Substantive Criminal Law was established by the Minister for Justice, Equality and Law Reform to undertake a feasibility study into the codification of substantive criminal law into a single Crimes Act, which effectively will be a consolidated and modernised

* Lecturer in Law, School of Law, University of Limerick.

¹ An address by E. Barnes, former Director of Public Prosecutions, to the Law Society of Ireland, Killarney, 4th May 1988, quoted in P. Charleton, P. A. McDermott and M. Bolger, *Criminal Law* (Dublin: Butterworths, 1999) at 4.

² *Ibid.* at 5.

criminal code.³ This will include homicide and related offences; offences involving the use of serious violence on the victim; property offences including criminal damage to property; offences involving dishonesty such as theft and fraud offences; corruption offences; public order offences; defences to a criminal charge, and aspects of criminal procedure pertaining to arrest and detention of suspects, criminal procedure, criminal law jurisdiction of the courts, sentencing procedure and policies. In 2004, the report of Expert Group, *Codifying the Criminal Law*,⁴ recommended a phased codification of Irish criminal law encompassing the general principles of criminal liability and the principal criminal offences, together with the existing legislation and common law, into the proposed criminal code in the form of a single Crimes Act. Moreover, the incremental legislative reform of the criminal law since the 1990s has to all intents and purposes resulted in a corpus of criminal law statutes or ‘mini-codes’ on some, but not all, of the principal areas of the criminal law.⁵ The Expert Group noted that as a result of the raft of criminal law legislation in the past two decades a degree of clarity and legal certainty has been introduced into the criminal law in addition to a necessary measure of order pertaining to the sources and definitions in addition to greatly improving the law’s comprehensibility.⁶

The key elements of criminal liability have been comprehensively examined by McAuley and McCutcheon in their seminal work *Criminal Liability: A Grammar*,⁷ which provides a systematic treatment of the general principles of criminal liability together with a detailed explanation and critical analysis of a broad range of issues pertaining to the construction of criminal liability. *Criminal Law* by Charleton (*et al*)⁸ provides a comprehensive academic and practical explanation of Irish criminal law, including the elements of criminal liability and participation in crime to specific criminal offences, in addition to a detailed treatment of the various defences. In addition to these works, Hanly offers an indispensable comprehensive narrative account of Irish criminal law.⁹

³ The task of codification will be carried out by the Criminal Law Codification Committee established under Part 14 of the *Criminal Justice Act 2006*, to implement the recommendation of the report of the Expert Group.

⁴ Expert Group on the Codification of the Criminal Law, *Codifying the Criminal Law* (Stationery Office: Dublin, 2004).

⁵ *Ibid.* at para. 2.10.

⁶ *Ibid.* at para. 2.12.

⁷ F. McAuley & P. McCutcheon, *Criminal Liability: A Grammar* (Dublin, London: Round Hall, 2000). The distinguishing feature of this work pertains to the historical approach to the elements of criminal liability and the extensive use of comparative and historical materials.

⁸ *Supra* note 1.

⁹ C. Hanly, *An Introduction to Irish Criminal Law*, 2nd ed. (Dublin: Gill & Macmillan, 2006).

The 'casebook' or 'case method' of legal education is the primary method of teaching law in leading United States Law Schools. This method was pioneered at Harvard Law School by Professor Christopher Columbus Langdell and is based on the principle that the best approach to studying the law is to read the judicial opinions which become the law under the doctrine of precedent (*stare decisis*) as opposed to studying highly abstract summaries of legal rules in books providing a narrative account of the law. The casebook method requires students to work almost exclusively with primary source materials which are often written in obscure or obsolete language. To that end, *Criminal Law in Ireland: Cases and Commentary* is a welcome addition to the criminal law library in Ireland, which examines the law from a new perspective by offering a collection of case extracts, statutory provisions, extracts from leading texts, articles, Law Reform Commission publications, and other commentaries together with authors' authoritative comments which define, clearly explain and illustrate the main principles of criminal law, so as to facilitate students' understanding of the fundamental principles of the subject. The book explains the development of Irish criminal law in a factual context and will help students in meeting the intellectual challenges in locating a diverse array of materials that the study of law entails. The structure of the book provides a clear explanation of the key principles and concepts for students at undergraduate or postgraduate level studying criminal law. It will also serve the practitioner's needs and others with a real interest in the subject.

Criminal Law in Ireland: Cases and Commentary extends to over 1,100 pages and is the first cases, materials and commentary book on the subject to be published in Ireland for almost two decades.¹⁰ The book provides a comprehensive examination of the general principles of criminal liability and their application to the core offences as they apply in Ireland. The text navigates the reader through the chapters dealing with *inter alia* the definition and classifications of crime, the elements of important criminal offences, aspects of criminal procedure, in addition to the various negating factors and defences to criminal charges. The unique feature of this book is the extensive range of support materials cited to substantiate and illustrate the law. Irish case law as well as that of other jurisdictions, principally England and Wales, is liberally cited throughout the book as are legislative and relevant constitutional law provisions.

The efficient structure of the book will ensure that students and others with an interest in the subject will not only gain a firm understanding of the law but will also gain an

¹⁰ P. Charleton, *Criminal Law: Cases and Materials* (Dublin: Butterworth, 1992).

appreciation of contemporary theoretical and ethical debates. It is an essential and complete resource for students seeking to get to grips with the always fascinating and challenging subject of criminal law. The book is neatly divided into twenty-four chapters: **1.** The Definition of Crime; **2.** The Classification of Crime; **3.** Actus Reus; **4.** Mens Rea; **5.** The Inchoate Offence of Attempt; **6.** The Inchoate Offence of Conspiracy; **7.** The Inchoate Offence of Incitement; **8.** Criminal Participation; **9.** The Presumption of Innocence; **10.** Arrest; **11.** The Right to Silence; **12.** Powers of Detention; **13.** The Courts of Criminal Jurisdiction; **14.** Bail; **15.** Non-Fatal Offences against the Person; **16.** Sexual Offences; **17.** Homicide; **18.** Offences against Property; **19.** Offences of a Public Nature and Offences against the State; **20.** Offences against the Administration of Justice; **21.** Defences: A Theoretical Guide; **22.** General Defences; **23.** Capacity Defences; **24.** Defences Specific to Murder. These topics will cover most aspects of any substantive undergraduate or postgraduate criminal law module at third level institutions and professional bodies. The law is presented in a clear, concise and thorough manner. Chapters are efficiently divided into sub-headings with paragraph numbers, which is accompanied by a further reading section with a convenient reference to leading articles which provides direction for further investigation and study, highlights key areas and thus serves to deepen the student's knowledge of the subject.

In view of the diverse nature of the criminal law in contemporary society, including the increasing volume of regulatory or quasi-criminal offences,¹¹ and the use of the civil law in criminal matters such as criminal assets and proceeds of crime,¹² a precise definition of a criminal offence is difficult to attain with any degree of certainty. Ashworth writes:

[g]iven the variety of forms of behaviour that have been criminalized, it is no surprise that Glanville Williams ended his search for a definition of crime without identifying any criterion based on subject-matter. He concluded that only a formal definition is sustainable¹³

In Chapters 1 and 2 the authors effectively deal with the inherent complexities pertaining to the definition and classification of criminal offences. Substantive criminal law does not operate

¹¹ See, for example, S. Kilcommins and U. Kilkelly, *Regulatory Crime in Ireland* (Dublin: Lonsdale Law Publishing, 2010).

¹² See, for example, L. Campbell, "Theorising Asset Forfeiture in Ireland" (2007) 71 *Journal of Criminal Law* 441; J. Meade, "Organised Crime, Moral Panic and Law Reform: the Irish Adoption of Civil Forfeiture" (2000) 10(1) *Irish Criminal Law Journal* 11.

¹³ A. Ashworth, *Principles of Criminal Law*, 6th ed. (Oxford: Oxford University Press, 2009) at 3, referring to G. Williams, "The Definition of a Crime" (1955) 8 *Current Legal Problems* 107.

in isolation within the criminal justice system and in Chapters 9 to 14 the authors provide a detailed account of core elements in the criminal process including powers of arrest and detention, right to silence and presumption of innocence. In the remaining chapters, the authors deal with the general principles of criminal liability including the conduct element (*actus reus*), fault element (*mens rea*), absence of and theoretical justifications for a valid defence, in addition to a critical examination of the most important criminal offences in the criminal calendar including theft and fraud offences, criminal damage, homicide and related offences, non-fatal offences against the person, sexual offences and offences against the State and the administration of justice and principles governing extending the ambit of criminal liability in terms of the rules governing participation in crime.

Since the enactment of the *European Convention on Human Rights Act 2003*, the E.C.H.R. has been adopted on a sub-constitutional level under Irish domestic law. The jurisprudence of the European Court of Human Rights has a greater influence in domestic proceedings in that the superior courts are henceforth required to take judicial notice of declarations, decisions, advisory opinions and judgments of the European Court of Human Rights and to take “due account” of the principles established by those instruments.¹⁴ Consequently, the superior courts are enjoined, where possible, to interpret national law in a manner that is compatible with the E.C.H.R.¹⁵ and the superior courts are authorised to issue a declaration of incompatibility where a national law is deemed to conflict with the provisions of the E.C.H.R.¹⁶ The authors have liberally referred to the impact of human rights on the criminal law throughout the book including: the dilemma pertaining to the definition of criminal offences;¹⁷ detention;¹⁸ lawful chastisement of children;¹⁹ right to silence;²⁰ reasonable access to a lawyer;²¹ use of lethal force in self-defence.²²

Criminal Law in Ireland: Cases and Commentary offers an exciting and accessible exploration of the criminal law, providing students with a detailed knowledge and includes extensive discussion on the theoretical and practical issues raised by the leading cases. The

¹⁴ *European Convention on Human Rights Act 2003*, s. 4.

¹⁵ *Ibid.* s. 2.

¹⁶ *Ibid.* s. 5.

¹⁷ L. Campbell, S. Kilcommins & C. O’Sullivan, *Criminal Law in Ireland: Cases and Commentary* (Dublin: Clarus Press, 2010) at 18.

¹⁸ *Ibid.* at 458.

¹⁹ *Ibid.* at 528.

²⁰ *Ibid.* at 402–415.

²¹ *Ibid.* at 449.

²² *Ibid.* at 898–900.

elements of important criminal offences are clearly defined and explained. Extracts from seminal cases and other academic authorities are included with the intention that students can learn about the key judicial decisions pertaining to the scope and development of the criminal law from a theoretical and comparative perspective where applicable. Taken together, the book is effectively a 'mini criminal law library in one volume'.

This book offers an exceptional depth of analysis while at the same time providing a wealth of cases, materials and commentaries set within the theoretical context of substantive criminal law and aspects of criminal procedure. The authors present the law in a clear and easily comprehensible manner. Each chapter adopts an effective structure that sets out the law and describes the theoretical materials in a systematic order and clearly defined chapter sub-headings make specific points easy to locate. This approach serves to ensure that the reader will gain a firm understanding of the law. The structure of the book together with the authors' clarity of expression places the law in context and thus ensures that complex theoretical material is made accessible to students. The layout and chapter structure makes the book easy for the reader to navigate, with a clear differentiation between authors' commentaries and judiciously selected commentaries and materials: these extracts make the book very comprehensive as the text not only informs the reader as to the current state of the law, but also subjects the case law and legislative provisions to critical analysis by including the views of various leading academic commentaries in the field of study. This approach is significantly important for students to gain a comprehensive understanding of the law, together with knowledge of theoretical and policy concerns. Rather than adopting a 'black-letter approach' the authors have incorporated deeper theoretical issues and critical analysis, which serve to develop the students' knowledge and understanding.

Criminal Law in Ireland: Cases and Commentary offers a student-centred approach to the study of Irish criminal law and presents a clear and concise explanation of general principles of criminal liability and principal offences which is accompanied by fully integrated extracts from leading cases in addition to a wide range of leading academic commentaries. These extracts have clearly been carefully selected in order to ensure that they are sufficiently detailed to illustrate the legal issues being considered, while at the same time being sufficiently concise so as not to disrupt the flow of the text, nor indeed to confound the student new to the study of the Irish criminal law. The book is carefully structured with the needs of the student firmly in mind. Each chapter begins with basic principles, and gradually covers all the core elements of topics on a typical criminal law syllabus at third level institutions and professional bodies.

Criminal Law in Ireland: Cases and Commentary examines the principles and rules of the criminal law in addition to the theoretical bases upon which they are founded. This book combines the best features of a textbook on criminal law with those of a cases and materials book, thus offering the student sound guidance and direction on the law, while at the same time presenting key primary materials. The added values of this book in comparison with competing books on the subject are, *inter alia*, that it:

- includes relevant extracts from important cases, academic articles, leading textbooks, Law Reform Commission publications, and other leading commentaries which have been carefully edited so as to make them more accessible to students;
- includes analysis of important decisions and new developments in specific areas including: *Director of Public Prosecutions v. O'Donoghue* [2006] I.E.C.C.A. 134 (involuntary manslaughter); *Director of Public Prosecutions v. Nally* [2007] 4 I.R. 145 (self defence and the excessive use of force); *Director of Public Prosecutions v. Cagney and McGrath* [2007] I.E.S.C. 46 (endangerment); *Director of Public Prosecutions v. Tanner* [2006] I.E.C.C.A. 151 (possession constituting the *actus reus*); *Minister for Justice, Equality and Law Reform v. Dolny* [2009] I.E.S.C. 48 (assault causing harm); *People (Director of Public Prosecutions) v. Barnes* [2007] 3 I.R. 130 (burglary); *Reid and Kirwan v. Director of Public Prosecutions* [2004] 1 I.R. 392 (affray);
- includes the major changes brought about by recent legislation including the *Criminal Justice (Theft and Fraud Offences) Act 2001*; *Criminal Justice (Terrorist Offences) Act 2005*; *Criminal Justice (Amendment) Act 2009*; *Criminal Justice Act 2006*; *Criminal Justice Act 2007*; *Criminal Justice Act 2009*; *Criminal Law (Human Trafficking) Act 2008*; *Criminal Law (Insanity) Act 2006*; *Sex Offences Act 2001*; *Criminal Law (Sexual Offences) Act 2006*; *Criminal Law (Sexual Offences)(Amendment) Act 2007*; *Non-Fatal Offences against the Person Act 1997*;
- comprehensively examines the main principles and rules of substantive criminal law and aspects of criminal procedure, and explores the theoretical bases upon which they are founded;
- examines the relationship between substantive criminal law and criminal procedure.

This innovative book will engage the reader in a lively approach to learning the criminal law and will also serve to stimulate reflection pertaining to the role and functions of criminal law in contemporary society. It is very well structured, readily accessible with clear chapter sub-headings and paragraph numbers to facilitate the reader to navigate the text with confidence, and clearly presents and explains the core principles and policies accompanied by contemporary theoretical debates. *Criminal Law in Ireland: Cases and Commentary* is a comprehensive yet easily digestible book that critically examines the key principles and rules of substantive criminal law and explores the theoretical bases upon which they are founded. The authors provide an extensive collection of extracts and other commentaries designed to define and illustrate the main principles of criminal law and highlights proposals for reform. It will undoubtedly be received as one of the leading contemporary sourcebooks on Irish criminal law, which provides an extensive collection of cases, statutory provisions, extracts from textbooks, articles and other pertinent academic commentaries. By placing the emphasis on the 'casebook method', using text for introductory and explanatory purposes and for reflection, the authors clearly define and illustrate the core principles of criminal law in an informative, authoritative, detailed but easily comprehensible manner and is to be highly recommended to students and others with an interest in substantive criminal law as it applies in Ireland. The book is published by Clarus Press and is competitively priced at €99.